

UNITED STATES OF AMERICA  
BEFORE THE NATIONAL LABOR RELATIONS BOARD  
ATLANTA BRANCH OFFICE  
DIVISION OF JUDGES

COLUMBIANA HI TECH, L.L.C.

and

Case No. 8-CA-35545

ARTIST HURST, An Individual

*Rudra Choudhury, Esq., for the General Counsel.  
No appearance for the Respondent.*

**BENCH DECISION**

**Statement of the Case**

**MICHAEL A. MARCIONESE, Administrative Law Judge.** I heard this case in Cleveland, Ohio on May 12, 2005. Artist Hurst, an individual, filed the charge on January 7, 2005. The complaint issued on March 28, 2005, alleging that Columbiana Hi Tech, L.L.C., the Respondent, violated Section 8(a)(1) of the Act by promulgating and maintaining, since at least December 20, 2004<sup>1</sup>, a rule prohibiting its employees from discussing their hourly wage rate, and by discharging Hurst on December 30 for violating this rule. The complaint also alleged that the Respondent violated Section 8(a)(1) on December 31, through its Manufacturing Manager Chris Feezle, by orally repeating the rule at a meeting of its employees. On April 7, 2005, the Respondent, through counsel, filed its answer to the complaint, admitting that it discharged Hurst but denying that it did so for the alleged unlawful motive and denying that it promulgated or maintained any unlawful rule.

The Respondent did not appear at the hearing, despite having received notice of the hearing along with the complaint. After hearing the testimony of the General Counsel's witnesses and considering the documentary evidence and oral argument of Counsel for the General Counsel, I rendered a bench decision in accordance with Section 102.35(a)(10) of the National Labor Relations Board's Rules and Regulations. For the reasons stated by me on the record at the close of the hearing, I found that the Respondent in fact maintained the rule alleged in the complaint at least since December 20, that it discharged Hurst on December 30, for violating that rule, and that it reiterated the rule in meetings with employees the following day. Based on these facts, which were undisputed, I concluded that the Respondent violated Section 8(a)(1) of the Act as alleged in the complaint.

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<sup>1</sup> All dates are in 2004 unless otherwise indicated.

I hereby certify the accuracy of the portion of the transcript, pages 69 through 83, containing my Bench Decision. A copy of that portion of the transcript, as corrected<sup>2</sup>, is attached as "Appendix B".

5 Conclusions of Law

1. By promulgating and maintaining, at least since December 20, 2004, a rule prohibiting its employees from discussing their hourly wage rates, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

2. By discharging Artist Hurst on December 30, 2004 for violating its unlawful rule prohibiting employee discussion of their wage rates, the Respondent has engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act.

Remedy

Having found that the Respondent has engaged in certain unfair labor practices, I find that it must be ordered to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. The Respondent having unlawfully discharged an employee, it must offer him reinstatement and make him whole for any loss of earnings and other benefits, computed on a quarterly basis from date of discharge to date of proper offer of reinstatement, less any net interim earnings, as prescribed in *F. W. Woolworth Co.*, 90 NLRB 289 (1950), plus interest as computed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). Although there was some testimony at the hearing indicating that the Respondent had closed the facility involved in these proceedings, the Respondent may still be operating at other locations. I shall leave issues as to whether reinstatement is still available as a remedy to resolution at the compliance stage of the proceedings. However, because of the evidence indicating that the facility has closed, I shall recommend that the Respondent also be required to mail the Notice that would ordinarily be posted to all employees who were employed at the Columbiana facility at any time between December 20, 2004 and the date the facility closed. Finally, I shall recommend that the Respondent rescind the unlawful rule and advise employees that it has done so and that they are free to discuss their wage rates and other terms and conditions of employment without retribution.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended<sup>3</sup>

40 ORDER

The Respondent, Columbiana Hi Tech, L.L.C., Columbiana, Ohio, its officers, agents, successors, and assigns, shall

45 1. Cease and desist from

<sup>2</sup> The corrections to the transcript are reflected in the attached Appendix C.

<sup>3</sup> If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(a) Promulgating and maintaining any rules that prohibit employees from discussing their wage rates and other terms and conditions of employment with other employees.

5 (b) Discharging or otherwise disciplining employees for discussing their wage rates and terms and conditions of employment with other employees, or for engaging in any other concerted activity protected by Section 7 of the Act.

10 (c) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

15 (a) Rescind the unlawful rule prohibiting employee discussions about their wage rates and notify employees that the rule is no longer in effect.

(b) Within 14 days from the date of the Board's Order, offer Artist Hurst full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

20 (c) Make Artist Hurst whole for any loss of earnings and other benefits suffered as a result of his unlawful discharge in the manner set forth in the remedy section of the Decision.

25 (d) Within 14 days from the date of the Board's Order, remove from its files any reference to the unlawful discharge, and within 3 days thereafter notify Hurst in writing that this has been done and that the discharge will not be used against him in any way.

30 (e) Preserve and, within 14 days of a request, or such additional time as the Regional Director may allow for good cause shown, provide at a reasonable place designated by the Board or its agents, all payroll records, social security payment records, timecards, personnel records and reports, and all other records, including an electronic copy of such records if stored in electronic form, necessary to analyze the amount of backpay due under the terms of this Order.

35 (f) Within 14 days after service by the Region, post at its facility in Columbiana, Ohio copies of the attached Notice marked "Appendix A."<sup>4</sup> Copies of the Notice, on forms provided by the Regional Director for Region 8, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where Notices to employees are customarily posted.  
40 Reasonable steps shall be taken by the Respondent to ensure that the Notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the Notice to all current employees and former employees employed by the Respondent at any time since  
45 December 20, 2004.

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50 <sup>4</sup> If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

(g) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C.

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Michael A. Marcionese  
Administrative Law Judge

APPENDIX A

NOTICE TO EMPLOYEES

Posted by Order of the  
National Labor Relations Board  
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this Notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union  
Choose representatives to bargain with us on your behalf  
Act together with other employees for your benefit and protection  
Choose not to engage in any of these protected activities

WE WILL NOT promulgate and maintain any rules that prohibit you from discussing with your fellow employees your wage rates and other terms and conditions of employment.

WE WILL NOT discharge or otherwise discipline any of you for discussing your wage rate or other terms and conditions of employment with other employees, or for exercising any of the other rights set forth above.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL rescind the unlawful rule prohibiting employee discussions about their wage rates and notify employees that the rule is no longer in effect.

WE WILL, within 14 days from the date of this Order, offer Artist Hurst full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Hurst whole for any loss of earnings and other benefits resulting from his discharge, less any net interim earnings, plus interest.

WE WILL, within 14 days from the date of this Order, remove from our files any reference to the unlawful discharge of Hurst, and WE WILL, within 3 days thereafter, notify him in writing that this has been done and that the discharge will not be used against him in any way.

COLUMBIANA HI TECH, L.L.C.

(Employer)

Dated \_\_\_\_\_ By \_\_\_\_\_  
(Representative) (Title)

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The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: [www.nlrb.gov](http://www.nlrb.gov).

1240 East 9th Street, Federal Building, Room 1695, Cleveland, OH 44199-2086

(216) 522-3716, Hours: 8:15 a.m. to 4:45 p.m.

30

**THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE**

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (216) 522-3723.

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## APPENDIX B

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5 1 JUDGE MARCIONESE: Back on the  
2 record. Okay at this point I will now render my Bench  
3 decision having heard the testimony that there is in  
10 4 the record. I also, I guess Mr. Choudhury, during the  
5 break were you able to determine whether there was any  
6 response to your voice mail message left with  
15 7 Mr. Powell's office?

8 MR. CHOUDHURY: Upon returning to my  
9 office at the close of evidence I did check my voice  
20 10 mail messages. I had no messages left from  
11 Respondent's counsel.

12 JUDGE MARCIONESE: Okay. All right.  
25 13 Well at this point there's nothing really left for me  
14 to do other than to make a decision in this matter and  
30 15 particularly here where Respondent has not appeared  
16 and the evidence is essentially uncontroverted, there  
17 seems to be no need for filing of briefs or any  
35 18 further delay in deciding this case.

19 This case started when Mr. Artist Hurst,  
20 an individual, filed the unfair labor practice charge  
40 21 that is at the bottom of this case on January 7th,  
22 2005. The formal papers in evidence establish that  
23 the charge was served by mail upon Columbiana Hi Tech  
45 24 LLC, the Respondent herein, on January 10th of 2005.

25 Based upon that charge the complaint

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1 issued on March 28th, 2005 alleging that the  
2 Respondent violated Section 8(a)(1) of the Act since  
3 at least December 20th, 2004, by promulgating and  
4 maintaining a rule prohibiting discussions among  
5 employees about their hourly wage, that it further  
6 violated Section 8(a)(1) of the Act on December 30th,  
7 2004, when it discharged Mr. Hurst for violating that  
8 rule and again on December 31st when the Respondent's  
9 manufacturing manager, Chris Feezle, orally repeated  
10 the rule at an employee meeting.

11 On April 11th, 2005 the Respondent filed  
12 its answer to the complaint in which it denied the  
13 factual and legal allegations that it had committed  
14 any unfair labor practice.

15 Now as I noted at the beginning of the  
16 hearing although having been served with a copy of the  
17 complaint in the notice of hearing and being apprised  
18 of the allegations against it and the time and date of  
19 the hearing, Respondent has elected not to appear in  
20 this proceeding.

21 I have now heard the evidence that the  
22 General Counsel has offered in support of the  
23 allegations in the complaint as well as any inferences  
24 to be drawn by the Respon-, from the Respondent's  
25 failure to appear at the hearing and to produce

1 documents that were validly subpoenaed from the  
5 2 Respondent in preparation for this hearing.

3 And I will now render my decision  
4 pursuant to Section 102.35(a)(10) of the Board's Rules  
10 5 and Regulations governing Bench decisions.

6 There are certain requirements that have  
7 to be addressed in any decision and I will address  
15 8 those in the course of this as well.

9 In particular with respect to  
20 10 jurisdiction, I note that the complaint alleges and  
11 the Respondent has admitted in its answer that it is a  
12 Delaware limited liability corporation with an office  
25 13 and place of business in Columbiana, Ohio, and that it  
14 is engaged there in the fabrication of specialized  
15 metals for the nuclear industry.

30 16 Respondent further admitted in its  
17 answer that it annually purchased and received at that  
18 facility goods valued in excess of \$50,000 directly  
35 19 from points located outside the State of Ohio.

20 Based upon these admitted facts I find  
40 21 that the Respondent is an employer engaged in commerce  
22 within the meaning of Section 2.2(6) and (7) of the  
23 Act.

45 24 Respondent also admitted in its answer  
25 25 that certain named individuals including vice

1 president of quality John Bossone, B-o-s-s-o-n-e, and  
5 2 manufacturing manager Mr. Feezle, F-e-e-z-l-e, were  
3 its supervisors within the meaning of Section 2.11 of  
4 the Act and its agents within the meaning of Section  
10 5 2.13 of the Act.

6 Respondent also admitted discharging  
7 Mr. Hurst on December 30th but denied doing so for the  
15 8 reasons that General Counsel has alleged.

9 Now in this proceeding Mr. Hurst, the  
20 10 Charging Party, testified without any contradiction  
11 that he had been hired by Mr. Bossone on or about  
12 December 18th after some negotiation at the rate of  
25 13 pay of \$16.00 an hour and that he started work on  
14 December 20th, initially starting on the day shift and  
15 then pursuant to an agreement he had worked out with  
30 16 Mr. Bossone, transferring to the night shift the day  
17 later.

18 His tenure of employment did not last  
35 19 very long as Mr. Hurst was terminated on December  
20 30th, 2004, essentially about a weeks' worth of  
21 employment. The incident that apparently led to this  
40 22 short tenure apparently occurred on the night of  
23 December 29th when Mr. Hurst received his first  
45 24 paycheck.

25 According to Mr. Hurst, while reviewing

1 his paycheck and discussing and inquiring of other  
5 2 employees about deductions and withholdings and other  
3 matters that one would normally expect employees to  
4 inquire about or talk about, one employee by the  
10 5 nickname of Fireball, happened to observe Hurst's rate  
6 of pay and commented loud enough for others to hear  
7 that Hurst was making about three dollars an hour more  
15 8 than he, Fireball, was.

9               From Hurst's testimony there apparently  
20 10 was no follow up to that discussion. Mr. Hurst  
11 himself did not pursue the matter and continued to  
12 work. But later that evening while working on another  
25 13 job, again with Fireball and another employee,  
14 Fireball brought up this difference in pay again and  
15 gendering some discussion among the employees as to  
30 16 the reasons why employees were paid different rates of  
17 pay.

18               This discussion as described by Hurst  
35 19 and, again, without any contradiction from any other  
20 witnesses who may have been there, appears to be a  
21 rather routine conversation of the type that probably  
40 22 occurs frequently in work places all over the country.

23               However, Respondent apparently did not  
45 24 perceive it the same way for the next day Mr. Hurst  
25 25 was terminated at the start of his shift by Mr. Feezle

1 who's an admitted supervisor and agent of the  
2 Respondent.

3                   According to Hurst's testimony  
4 Mr. Feezle told him that what Mr. Hurst had done the  
5 night before was unethical and not businesslike and  
6 when Mr. Hurst inquired further as to what Mr. Feezle  
7 was talking about, Mr. Feezle told him that he had  
8 flaunted his paycheck around the shop.

9                   Even after Mr. Hurst explained what had  
10 actually happened the night before, Mr. Feezle told  
11 him that he was terminated and had him sign a  
12 personnel change notice, as evidenced in General  
13 Counsel's Exhibit 5, indicating that the termination  
14 was involuntary and that Mr. Hurst was not eligible  
15 for rehire.

16                   When Mr. Hurst met with Mr. Bossone, the  
17 gentleman who had hired him, shortly after his  
18 termination, probably several days later, Mr. Bossone  
19 confirmed that, in fact, the reason that Mr. Hurst had  
20 been terminated was because he had disclosed his rate  
21 of pay to other employees.

22                   And if there were any doubt as what the  
23 reason for termination was, in the position letter  
24 that the Respondent's counsel filed with the Regional  
25 Office during the investigation of the unfair labor

1 practice, which is in evidence as General Counsel's  
2 Exhibit 2, Mr. Powell essentially admits that  
3 Mr. Hurst was terminated for violating a specific  
4 directive not to discuss his rate of pay with other  
5 employees.

6 Now Mr. Hurst testified that before his  
7 termination he had not been told, either at the time  
8 he was hired or any time in that short period that he  
9 was working there, that he was prohibited from  
10 discussing his wages but it is clear from other  
11 evidence in the record that Respondent, in fact, did  
12 maintain such a rule.

13 I note first that the Mr. Dennis  
14 Hildebrand, another employee of the Respondent,  
15 testified that it was common at each evaluation  
16 session for the supervisor or other manager evaluating  
17 him to remind him not to discuss his wages with other  
18 employees.

19 And Mr. Hildebrand testified without any  
20 contradiction that this occurred as recently as August  
21 of 2004, during an evaluation by Mr. Bossone, who is  
22 an admitted supervisor and agent of the Respondent,  
23 that after discussing his wage increase that he was  
24 told not to let other employees know what he was, what  
25 he was getting and August 2004 is a date well within

1 the Section 10(b) period, the charge having been filed  
2 in early January of 2005.

3 It also appears from the limited  
4 evidence available in this record that even after  
5 Mr. Hurst was terminated Respondent reaffirmed the  
6 rule in meetings that it held with employees on  
7 December 30th, which was essentially the day Mr. Hurst  
8 was terminated but before his shift, apparently.

9 Mr. Hildebrand testified that he  
10 attended a meeting in the shop where Mr. Bob Hypes,  
11 identified as a quality control manager from the  
12 Respondent's Greensboro facility, who was working at  
13 the Columbiana plant overseeing a particular product  
14 and that Mr. Hypes told employees, in the presence of  
15 Mr. Feezle, that Hurst had been fired for displaying  
16 his paycheck.

17 And there was no evidence or testimony  
18 that Mr. Feezle in any way attempted to correct or  
19 contradict Mr. Hypes statements in that regard.

20 There's also hearsay testimony in the  
21 record from Mr. Hurst regarding a conversation he had  
22 at a gas station the day after he was fired when an  
23 individual whose name he did not know but he  
24 identified as the person who gave him his welding test  
25 before he was hired, told Mr. Hurst that Respondent

1 had held a meeting with the employees on the day that  
2 he was fired and that the employees were told that  
3 they were not allowed to talk about wages.

4               Although hearsay is ordinarily not  
5 admissible under the Federal Rules of Evidence the  
6 Board has, on occasion, considered and received  
7 hearsay when there's other evidence in the record that  
8 tends to corroborate it.

9               I also note that here we do have the  
10 evidence from Mr. Hildebrand regarding a similar  
11 meeting on that day, December 30th, in which Mr. Hypes  
12 with Mr. Feezle present essentially said the same  
13 thing, as well as inferences to be drawn from  
14 Respondent's failure to comply with a validly served  
15 subpoena duces tecum which would have required the  
16 production of rules, regulations or other documents  
17 that would show what rules, if any, exist at the  
18 Respondent's Columbiana facility.

19               So in the absence of any contradictory  
20 evidence I am compelled to find that as the complaint  
21 alleged that the Respondent in fact maintained a rule  
22 prohibiting its employees from discussing their wages  
23 and that it, in fact, terminated Mr. Hurst, the  
24 Charging Party, on December 30th for violating that  
25 rule.

1                   Now as the General Counsel points out in  
2 his closing argument the Board has long held that  
3 rules restricting employees rights to discuss their  
4 wages and working conditions are unlawful under  
5 Section 8(a)(1) of the Act, absent a substantial  
6 business justification.

7                   And in addition to the cases that were  
8 cited by the General Counsel, I would cite one of the  
9 lead cases, Jeannette Corporation, J-e-a-n-n-e-t-t-e,  
10 217 NLRB 653, 1975 which was enforced by the Third  
11 Circuit in 1976 at 532 et 2nd, 916 at Page 917.

12                   Also I'll refer you to Heck's  
13 Incorporated, that's H-e-c-k apostrophe s, 293 NLRB  
14 1111 at Page 1119, 1989, Fredericksburg Glass and  
15 Mirror Incorporated, 323 NLRB 165 1997, and NLRB  
16 versus Main Street Terrace Care Center, 218 F3rd 531  
17 at Pages 537 through 539, a decision enforcing a Board  
18 Order in the Sixth Circuit from 2000.

19                   And in Jeannette Corporation, perhaps  
20 the lead case, the Board, in fact, had rejected as a  
21 business justification that the employer's concern  
22 that discussions among employees regarding their wages  
23 might lead to jealousy and strife among the workers  
24 that the Board found that that was a sufficient, was  
25 not a sufficient or a substantial business

1 justification to allow a restriction on employees'  
2 rights.

3                   And I note that it appeared from, I  
4 think I had seen it in the Respondent's position  
5 statement that it appeared that that was the rationale  
6 they were using to justify the rule that they were  
7 concerned about the dissension or that, or the  
8 controversy that might arise if employees were allowed  
9 to discuss their wage rates and the Board has already  
10 rejected that as a defense.

11                   And as General Counsel points out too in  
12 his closing arguments the rationale behind the Board's  
13 decisions in this area is pretty clear that usually  
14 discussions regarding wages and working conditions are  
15 precursor to any other organizational activity.

16                   It's really at the core of the Sections  
17 cite of the right of employees to engage in concerted  
18 activity either for collective bargaining or for their  
19 mutual aid or protection and any restriction by an  
20 employer on these basic rights obviously runs afoul of  
21 the Act.

22                   All right and also too, although that's  
23 really not at issue in this case because we have  
24 enforcement, the Board has also said that even the  
25 mere maintenance of such a rule has been, is unlawful

1 because of the reasonable tendency of these  
2 restrictions to interfere with employees' Section 7  
3 rights.

4 And, of course, one of the cases on that  
5 is the Automatic Screw Products Company dealing with  
6 the maintenance of a rule when there's no  
7 organizational activities cited by the General  
8 Counsel.

9 Also the Heck's case that I previously  
10 cited and Radisson Plaza Minneapolis at 307 NLRB 94.  
11 Here not only do we have maintenance of the rule we  
12 have its reaffirmation to employees at evaluations and  
13 in employee meetings and we have the enforcement of  
14 the rule through the termination of Mr. Hurst.

15 Under all of that, considering the  
16 evidence and the law that is still, as far as I know,  
17 a good law under the Board's, and currently before the  
18 Board, I must conclude that the Respondent did, in  
19 fact, violate the National Labor Relations Act as  
20 alleged in the complaint, Section 8(a)(1), by  
21 maintaining a rule prohibiting employees from  
22 discussing wages among themselves and, in fact,  
23 terminating the Charging Party for violating that  
24 rule.

25 Now in due course I will be issuing my

1 decision upon receipt of the transcript of these  
2 proceedings. I will certify the record and certify my  
3 Bench decision. I will then issue an order and the  
4 order will include the standard remedy.

5  
10 5 Essentially in a case of this nature the  
6 Board's traditional remedies is that Respondent will  
7 be required to offer full re-instatement to Mr. Hurst  
15 8 to his previous position or if that position no longer  
9 exists to a substantially equivalent one and to make  
10 him whole for any wages and benefits that he may have  
20 11 lost as a result of the Respondent's discriminatory  
12 and unlawful discharge of him.

13 The Respondent will also be required to  
25 14 rescind whatever rules it has restricting employees  
15 from discussing their wages and working conditions, to  
30 16 notify the employees either by issuance of a revised  
17 handbook or a notice that it has, in fact, rescinded  
18 the rule and that they are free to have those  
35 19 discussions.

20 And Respondent will also be required to  
21 post a notice to employees and comply with that notice  
40 22 and I will, the notice to be posted will be included  
23 in my written decision that will follow upon receipt  
24 of the transcript.

45 25 Now there was some testimony,

1 Mr. Hildebrand mentioned it, that Respondent had  
2 closed the Columbiana plant where the unfair labor  
3 practice has been committed but it's my understanding  
4 that they are still in business.

5 I will leave to the compliance stage of  
6 these proceedings the determination as to whether or  
7 not reinstatement is still available to Mr. Hurst  
8 either at Columbiana or at some other facility or  
9 whether future reinstatement, conditional upon  
10 Respondent resuming operations, would be appropriate  
11 but those matters can be resolved in the compliance  
12 stage of the proceeding.

13 Also if it turns out that the Respondent  
14 has closed the plant where the unfair labor practice  
15 has occurred, as an alternative I will order that the  
16 Respondent mail a copy of the notice to each employee  
17 who was on the payroll as of the date of the unfair  
18 labor practice, which was December 30th of 2004.

19 Okay, anything further? Okay that is my  
20 decision pursuant to the Board's Rules and Regulations  
21 as I indicated previously. Upon receipt of the  
22 transcript I will certify the record, make any  
23 corrections to the transcript that need to be made.

24 I will prepare the formal order and the  
25 notice to be issued and posted. A copy of that

1 written decision will be served on all parties

2 including the Respondent, even though they have not

3 appeared here today.

4 At that point all parties have a right

5 to file exceptions including the Respondent before the

6 Board in Washington. I will refer the parties to the

7 Board's Rules and Regulations for the procedures for

8 the filing of exceptions and service on parties and

9 then the Board will then rule upon any exceptions

10 including any exceptions to evidentiary rulings.

11 Okay, anything further? Okay, I'll ask

12 the Court Reporter, are all of the exhibits, General

13 Counsel's 1 through 5 have they all been received?

14 COURT REPORTER: Yes.

15 JUDGE MARCIONESE: Yes, okay. All

16 right, if there's nothing further then I will close

17 the record and you'll be receiving my decision in due

18 course. Thank you very much.

19 (Whereupon the hearing was concluded at 12:08 p.m. on

20 Thursday, May 12, 2005)

## APPENDIX C

	Page(s)	Line(s)	Delete	Insert
5	15	8-10	Ben and Mills	Bannon Mills
	16	11, 17, 22-23	Ben and Mills	Bannon Mills
	17	2 & 18	Ben and Mills	Bannon Mills
10	73	14-15	and gendering	engendering
	78	11	et 2nd	f.2d
	78	11	at 917	at 919
	79	16-17	sections cite	Section 7 rights
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